



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/171358

PRELIMINARY RECITALS

Pursuant to a petition filed January 13, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on March 09, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly established a FoodShare (FS) overpayment in the amount of \$7,200 for the period from June 14, 2013 to December 31, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED]
[REDACTED]

By:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By:

[REDACTED]
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On June 14, 2013 the petitioner applied for FoodShare (FS) benefits. She stated that she had two children in her household for a total household size of three. She reported that all three lived in Milwaukee, WI, and that all three bought and prepared meals together.
3. The petitioner reported her employment with [REDACTED]
4. On June 17, 2013 the agency sent the petitioner a notice stating that they needed verification of her children's living arrangement. Examples of verification included bills, lease, or city, or county documents.
5. The petitioner provided her children's social security cards. The agency used this information to verify that the children were living with the petitioner in Milwaukee. The children were staying with a relative in Georgia, and attending school full-time there. The petitioner previously reported the name of her children's school, but never reported that this school was in Georgia.
6. In June 2013 the petitioner's children were already enrolled in school full time in Georgia. The children continued to be enrolled in school full time in Georgia through the overpayment period.
7. Between June 2013 and December 2015 the petitioner completed six month renewals for her FS benefits. At each renewal the petitioner reported that her children lived with her in Milwaukee, WI.
8. Between June 2013 and November 2015 the petitioner FS benefits were used in 117 transactions. All of these 117 transactions except for the following three were in Georgia:
 - a. August 25, 2014 - \$78.60 in Milwaukee
 - b. September 12, 2014 - \$7.88 in Milwaukee
 - c. September 12, 2014 - \$2.62 in Milwaukee

Both of the September 12, 2014 purchases were at the same store.
9. The petitioner received \$7,200 in FoodShare (FS) benefits from June 14, 2013 to December 31, 2015. She received these benefits based on her income and expenses as a three person household.
10. On December 17, 2015 the agency sent the petitioner the overpayment notices stating the following:
 - a. From June 14, 2013 to December 31, 2013 the petitioner was overpaid \$3,396 in FS benefits under claim number [REDACTED]
 - b. From June 17, 2014 to May 31, 2015 the petitioner was overpaid \$3,116 in FS benefits under claim number [REDACTED]
 - c. From June 1, 2015 to December 31, 2015 the petitioner was overpaid \$688 in FS benefits under claim number [REDACTED]
11. On March 2, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be

recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, App. 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. Id. The date of discovery is the date the agency became aware of the potential that an overissuance may exist. Id.

Monthly FS benefits are determined starting with monthly gross income. See FoodShare Wisconsin Handbook, App. 1.1.4. The agency then deducts a limited number of specified household expenses to arrive at the net household income. Id. This net household income is compared to the household size to arrive at the monthly FS allotment. Id. The greater the household size, the greater the FS allotment. Id. A household of five with the same net income as another household of one will receive a much greater FS allotment than the household of one. Id.

A FS household consists of all persons living in or temporarily absent from the same residence. FoodShare Wisconsin Handbook, App. 3.3.1.1. The food unit contains people who live in the same household who purchase and prepare food together for home consumption. FoodShare Wisconsin Handbook, App. 3.3.1.1. This group is tested for eligibility together. Id.

In this case, the agency and the petitioner agreed that the petitioner’s children were attending school full time in Georgia. The petitioner argued that including these children in her FS group and household was the agency’s error, not her error. She testified that she included her children on her FS application because she claimed her children on her taxes. She further testified that her children were staying in Georgia during the school year, and returned to her home in Milwaukee in the summer. She believes that she was completely honest and forthright with the agency because she disclosed the name of her children’s school. When asked why she did not tell the agency that this school was in Georgia, and not Wisconsin, her response was that nobody ever asked her. The agency requested verification that her children were living with her. The petitioner provided their social security cards. The agency accepted this verification, opening the petitioner’s FS case as a household of three. The petitioner argues that it was agency error to accept the social security cards as verification.

The petitioner is not credible. She states that they returned to Milwaukee in the summer; however, during the more than two years for which she received FS benefits, there were only three FS transactions in Milwaukee. The remaining 114 FS transactions occurred in Georgia. I further note that two of these three transactions occurred on the same day at the same store in September. The remaining Wisconsin transaction was in August. There were no Wisconsin FS transactions in June or July. This evidence demonstrates that the petitioner’s testimony that her children were living with her in Milwaukee, WI during the summer is simply not credible. The continual FS usage in Georgia shows that the petitioner’s children were living with a household in Georgia whom they prepared and eat meals with. They did not prepare and eat meals with the petitioner in Milwaukee, WI.

I find that this overpayment is the result of client error, not agency error. I agree with the petitioner that the agency should have never accepted the children’s social security cards to verify their living arrangement. However, that does not change the fact that the petitioner should have told the agency that the children were attending school in Georgia. Although she told the agency the name of the school, she very conveniently failed to state that the school was in Georgia. On cross examination she stated that she did not disclose this very important fact because it was never asked. The application asks, “where you live.” It then goes on to ask for “people in your home.” Finally you have to clarify that each person you list actually lives in your home. The petitioner is a savvy woman who works for the [REDACTED]. Even if the agency made an error in accepting the social securities as verification of the living arrangement, this does not remedy the petitioner’s error in failing to disclose that her children were residing in Georgia.

I note that during direct examination the petitioner testified that she explained to a worker at the W-2 office, where she submitted her FS application, that her children were living and attending school in

Georgia, but that they returned in the summer and she claimed them on her taxes. She said the worker left it up to her to determine how to list this information on her application. One problem with this testimony is that the children did not return to Wisconsin in the summer. The FS usage is nearly entirely in Georgia during both the school year and summer months. The petitioner's FS benefits were not used once in Wisconsin in the months of June or July. Another problem is that the case notes reflect that the petitioner mentioned on the school name, and not the location of the school. On cross examination she states that she did not disclose the location of the school because nobody asked. If the petitioner was really interested in listing her children's living situation correctly she could have asked any number of workers whether or not she should include her children. Instead she provided vague information.

A final problem with this testimony is that the petitioner never presented this W-2 agency worker. Although this is the petitioner's own statement, presented by the petitioner the statement is still hearsay. It is the petitioner's own out of court statement offered for the truth of the matter stated. Under *Gehin I* cannot rely on uncorroborated hearsay to find that this was an agency error. *Gehin v. Wisconsin Group Ins. Bds*, 2005 WI 16, ¶¶53-56 & 58, 278 Wis.2d 111, 692 N.W.2d 572. I further note that the petitioner's testimony is extremely self-serving, and does not match the evidence in this case.

Based on the evidence presented, the agency has provided sufficient information to demonstrate that the petitioner incorrectly included her children in FS household and group from June 14, 2013 to December 31, 2015.

The petitioner though is correct that the agency has not demonstrated that the overpayment amount is correct. The agency calculated a 100% overpayment based on all the FS benefits issued to the petitioner during this overpayment period. This is incorrect. The agency never alleged that the petitioner was living in Georgia with her children. The petitioner was living and working in Milwaukee, WI as she reported. The agency needs to re-determine the petitioner's FS benefits during this overpayment period as a one person household. The overpayment is only the difference of the benefits issued versus the benefits a person was entitled to receive. If the petitioner was entitled to some benefits as a one person household, then the overpayment should be offset by that amount.

CONCLUSIONS OF LAW

The agency incorrectly established a FoodShare (FS) overpayment in the amount of \$7,200 for the period from June 14, 2013 to December 31, 2015.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency with the instructions to rescind the overpayment notices under claim numbers [REDACTED], [REDACTED], and [REDACTED]. The agency shall then recalculate the overpayment amount. They shall determine what benefits, if any, the petitioner was entitled to as a household size of one during the overpayment period. Next they shall subtract this amount from the total amount of FS benefits paid to the petitioner. Finally, they shall issue new overpayment notices reflecting this change. The agency shall comply with this order within 10 days of the date of decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

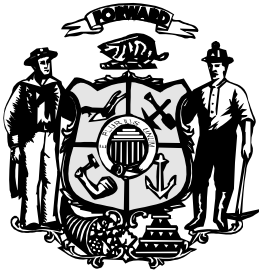
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of April, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 4, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]